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## Cases, Regulations and Statutes

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# CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

## BANKRUPTCY

### GENERAL

**AUTOMATIC STAY.** The debtors had initially filed for Chapter 12 in December 2008 in order to stop the foreclosure of their cattle ranch but the case was dismissed in October 2009 for failure to timely file a plan of reorganization. The debtors filed a second Chapter 12 case in November 2009 which was dismissed in February 2010. The debtors filed the current Chapter 11 case in March 2010 and the creditors moved for relief from the automatic stay because the third filing was not made in good faith. The court granted relief from the automatic stay because the debtors' serial filing of bankruptcy cases demonstrated that the debtors could not successfully reorganize. *In re Benefield*, 2010 Bankr. LEXIS 3200 (Bankr. D. N.M. 2010).

### CHAPTER 12

**CONVERSION.** The debtor had originally filed for Chapter 12 but the Bankruptcy Court ordered the case to be converted to Chapter 7 because the debtor had committed fraud in the case under the advice of an "anti-government agitator." The debtor requested re-conversion of the case back to Chapter 12, claiming that the intent to reorganize was sincere. The court noted that the debtor had helped the U.S. Marshall's Service stop the actions of the "agitator." The court allowed the conversion back to Chapter 12 with the condition that the debtor obtain qualified counsel and prepay all administrative expenses unless waived by a claim holder. *In re Bange*, 2010 Bankr. LEXIS 3176 (Bankr. D. Kan. 2010).

## FEDERAL FARM PROGRAMS

**BIOMASS CROP ASSISTANCE PROGRAM.** The CCC has published its Record of Decision regarding the FSA implementation of the Biomass Crop Assistance Program (BCAP) as provided for in the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill). The FSA prepared a Final Programmatic Environmental Impact Statement (PEIS) for BCAP, published in the Federal Register on June 25, 2010. This decision record summarizes the reasons FSA has selected the proposed action alternatives taking into account the program's expected environmental and socioeconomic impacts and benefits as documented in the PEIS, all of which were considered in this decision. **75 Fed. Reg. 65995 (Oct. 27, 2010).**

**CROP ASSISTANCE PROGRAM.** The FSA has issued an

interim rule specifying the eligibility requirements, payment calculations, and application procedures for the Crop Assistance Program (CAP) which provides emergency assistance to reestablish the purchasing power of eligible producers of rice, cotton, soybeans, and sweet potatoes in specified counties for which a Secretarial disaster designation was issued based on excessive moisture and related conditions for the 2009 crop year. The CAP will provide up to \$550 million to eligible producers. The interim regulations also propose a new information collection for the payment application. **75 Fed. Reg. 65423 (Oct. 25, 2010).**

## FEDERAL ESTATE AND GIFT TAXATION

**GENERATION-SKIPPING TRANSFERS.** The taxpayers, husband and wife, established an irrevocable grantor retained annuity trust. After the trust terminated, the trust assets passed to the taxpayers' living children and living descendants of the pre-deceased children. The taxpayers retained an accountant to prepare the gift tax return for the transfers to the trust and elected to treat the gifts as made one-half by each. The accountant failed to make the election out of automatic allocation of their GST exemption to the gifts. The taxpayers sought an extension of time to revoke the election. The IRS granted an extension of time to file amended Forms 709 to make the election. **Ltr. Rul. 201042005, July 7, 2010.**

The taxpayer was the current beneficiary and trustee of two pre-September 25, 1985 trusts. Both trusts had similar terms and provided that the beneficiary could appoint to the beneficiary up to five percent of the trust corpus each year. The trustee obtained a state court amendment of the trust to limit the time of the annual appointment to the month of January of each year. The trustee also obtained a court order merging the two trusts. The IRS ruled that the amendment and merger of the trusts did not subject the resulting trust to GSTT. **Ltr. Rul. 201042004, July 20, 2010.**

**GIFTS.** For calendar year 2011, the first \$13,000 of gifts to any person (other than gifts of future interests in property) are not included in the total amount of taxable gifts under I.R.C. § 2503 made during that year. For calendar year 2011, the first \$136,000 of gifts to a spouse who is not a citizen of the United States (other than gifts of future interests in property) are not included in the total amount of taxable gifts under I.R.C. §§ 2503, 2523(i)(2) made during that year. **Rev. Proc. 2010-40, I.R.B. 2010-46.**

## FEDERAL INCOME TAXATION

**ALIMONY.** The taxpayer's divorce decree provided for alimony payments to the taxpayer for eight years, decreasing in the years when the taxpayer's two children each reached age 20, although the decree makes no mention of the children's ages in relation to the decreases. The decrees also provided for child support payments. In addition, the payments were increased to offset the income tax on the payments. Although the taxpayer reported the payments as taxable alimony, the taxpayer sought a refund of the taxes based on the payments being child support payments. The taxpayer argued that the payments were child support because the payments were tied to the children's ages and the decree did not provide for termination of the payments upon the death of the taxpayer. The court held that the payments were taxable alimony because the decree did not specifically tie the payments to the ages of the children and state law provided that the payments would terminate on the death of the taxpayer. **Maes v. United States, 2010-2 U.S. Tax Cas. (CCH) ¶ 50,678 (D. Mont. 2010).**

**CELLULOSIC BIOFUEL PRODUCER CREDIT.** The taxpayer owned a pulp mill located in the United States that used the semi-chemical pulping process to convert wood chips into pulp for paper production. In this process, the wood chips are heated with a water-based solution of inorganic chemicals at elevated temperatures to weaken the bonds between cellulose and lignin. During this process, the inorganic chemicals bond to the lignin and the cellulose is extracted for further processing as pulp for paper. The by-product of this process, black liquor, is an aqueous solution consisting of lignin residues, hemicelluloses, and various inorganic chemicals. The black liquor was further processed to remove much of the water content and then used as a fuel source in a recovery boiler that produced steam used by the pulp mill. Before being used as a fuel, the black liquor was temporarily stored in tanks. The taxpayer had submitted a registration application with the IRS, Form 637, Application for Registration (For Certain Excise Tax Activities). The IRS ruled that the black liquor qualified as a cellulosic biofuel eligible for the cellulosic biofuel producer credit once the taxpayer completed registration. **Ltr. Rul. 201042018, July 14, 2010.**

**CHARITABLE CONTRIBUTIONS.** The taxpayer was a trust which purchased three properties with gross income from prior tax years. The properties were then contributed to a charitable organization and the issue was whether the eligible deduction was the purchase price of the properties or their current fair market value. In a Chief Counsel Advice letter, the IRS, although acknowledging some contrary authority, ruled that the trust charitable deduction was limited to the adjusted tax basis in the purchased properties because the appreciation of the properties was not realized in trust income prior to the contribution. **CCA 201042023, May 10, 2010.**

**DISASTER LOSSES.** On October 4, 2010, the President determined that certain areas in the Arizona are eligible for federal assistance under the Disaster Relief and Emergency Assistance

Act (42 U.S.C. § 5121) as a result of severe storms and flooding, which began on July 20, 2010. **FEMA-1940-DR.** On October 13, 2010, the President determined that certain areas in Minnesota are eligible for assistance from the government under the Act as a result of severe storms and flooding, which began on September 22, 2010. **FEMA-1941-DR.** On October 14, 2010, the President determined that certain areas in North Carolina are eligible for assistance from the government under the Act as a result of Tropical Storm Nicole, which began on September 22, 2010. **FEMA-1942-DR.** On October 14, 2010, the President determined that certain areas in New York are eligible for assistance from the government under the Act as a result of severe storms and tornadoes, which began on September 16, 2010. **FEMA-1943-DR.** Accordingly, taxpayers in the areas may deduct the losses on their 2009 federal income tax returns. See I.R.C. § 165(i).

**DOMESTIC PRODUCTION DEDUCTION.** The taxpayer was a non-profit marketing and processing cooperative of agricultural commodities produced by its members and patrons. Payments were made to patrons for their commodities but additional payments were made of net proceeds to patrons based on the amount of each patron's commodities marketed with the taxpayer. The IRS ruled that the latter payments were included in the qualified production activities income because the payments were patronage-based payments made without regard for the taxpayer's net earnings. **Ltr. Rul. 201041002, July 9, 2010.**

**FILING STATUS.** The taxpayer, a CPA, filed an income tax return using the single status in a year in which the taxpayer was legally married but lived apart from the spouse. The court held that the taxpayer could not use the single status since no divorce decree or legal separation decree had been filed in that tax year. The appellate court affirmed in a decision designated as not for publication. **Argyle v. Comm'r, 2010-2 U.S. Tax Cas. (CCH) ¶ 50,671 (3d Cir. 2010), aff'g, T.C. Memo. 2009-218.**

**HOME OFFICE.** The taxpayer claimed deductions for costs associated with a home office. Although the taxpayer used parts of the residence for the taxpayer's accounting services, the deductions for the expenses were denied because the taxpayer failed to substantiate that a portion of the residence was used exclusively for the business. The appellate court affirmed in a decision designated as not for publication. **Argyle v. Comm'r, 2010-2 U.S. Tax Cas. (CCH) ¶ 50,671 (3d Cir. 2010), aff'g, T.C. Memo. 2009-218.**

**HOUSING CREDIT.** *Rev. Proc. 92-31, 1992-1 C.B. 775*, provides guidance to state housing credit agencies of qualified states on the procedure for requesting an allocation of unused housing credit carryovers under I.R.C. § 42(h)(3)(D). Section 4.06 of *Rev. Proc. 92-31* provides that the IRS will publish in the Internal Revenue Bulletin the amount of unused housing credit carryovers allocated to qualified states for a calendar year from a national pool of unused credit authority (the National Pool). Qualified states are states that have allocated all their credits in a calendar year and who request, by May 1st of the following calendar year, to receive an allocation of credits from the National Pool determined in the year of the request. The

IRS announced that, for 2010, there is no unused housing credit carryover amount assigned to the National Pool. Consequently, there is no National Pool amount from which credits can be redistributed to qualified states. **Notice 2010-74, I.R.B. 2010-46.**

**INCOME.** The taxpayer was employed and received wages less withheld taxes. The taxpayer received Forms W-2 stating the payments and withholdings. Instead of filing Form 1040, the taxpayer filed Form 1041, U.S. Income Tax Return for Estates and Trusts, for each of three tax years. The forms reported the wages as trust income and deducted fiduciary expenses equal to the wages reported. The returns requested a refund for the withholding taxes. The IRS rejected the returns and assessed deficiencies based on substitute Form 1040 returns. The court held that the wages were personal gross income subject to income tax and withholding taxes. The taxpayer was assessed additions to the income tax for failure to file a return, failure to pay taxes, and failure to pay estimated taxes. The court also imposed a penalty for the taxpayer's making of frivolous arguments in the case. **Glover v. Comm'r, T.C. Memo. 2010-228.**

**INFLATION-ADJUSTED ITEMS.** The IRS has announced many of the inflation-adjusted deductions, credits and other limits for 2011. *Unearned Income of Minor Children Taxed as if Parent's Income (the "Kiddie Tax").* For taxable years beginning in 2011, the amount in I.R.C. § 1(g)(4)(A)(ii)(I), which is used to reduce the net unearned income reported on the child's return that is subject to the "kiddie tax," is \$950. The same \$950 amount is used for purposes of I.R.C. § 1(g)(7) (that is, to determine whether a parent may elect to include a child's gross income in the parent's gross income and to calculate the "kiddie tax"). *Adoption Credit.* For taxable years beginning in 2011, under I.R.C. § 36C(a)(3) the credit allowed for an adoption of a child with special needs is \$13,360. For taxable years beginning in 2011, under I.R.C. § 36C(b)(1) the maximum credit allowed for other adoptions is the amount of qualified adoption expenses up to \$13,360. The available adoption credit begins to phase out under I.R.C. § 36C(b)(2)(A) for taxpayers with modified adjusted gross income in excess of \$185,210 and is completely phased out for taxpayers with modified adjusted gross income of \$225,210 or more. *Rehabilitation Expenditures Treated as Separate New Building.* For calendar year 2011, the per low-income unit qualified basis amount under I.R.C. § 42(e)(3)(A)(ii)(II) is \$6,100. *Low-Income Housing Credit.* For calendar year 2011, the amount used under I.R.C. § 42(h)(3)(C)(ii) to calculate the State housing credit ceiling for the low-income housing credit is the greater of (1) \$2.15 multiplied by the State population, or (2) \$2,465,000. *Alternative Minimum Tax Exemption for a Child Subject to the "Kiddie Tax."* For taxable years beginning in 2011, for a child to whom the I.R.C. § 1(g) "kiddie tax" applies, the exemption amount under I.R.C. §§ 55 and 59(j) for purposes of the alternative minimum tax under I.R.C. § 55 may not exceed the sum of (1) the child's earned income for the taxable year, plus (2) \$6,800. *Income from United States Savings Bonds for Taxpayers Who Pay Qualified Higher Education Expenses.* For taxable years beginning in 2011, the exclusion under I.R.C.

§ 135, regarding income from United States savings bonds for taxpayers who pay qualified higher education expenses, begins to phase out for modified adjusted gross income above \$106,650 for joint returns and \$71,100 for other returns. The exclusion is completely phased out for modified adjusted gross income of \$136,650 or more for joint returns and \$86,100 or more for other returns. *Loan Limit on Agricultural Bonds.* For calendar year 2011, the loan limit amount on agricultural bonds under I.R.C. § 147(c)(2)(A) for first-time farmers is \$477,000. *Eligible Long-Term Care Premiums.* For taxable years beginning in 2011, the limitations under I.R.C. § 213(d)(10), regarding eligible long-term care premiums includible in the term "medical care," are as follows: Attained Age Before the Close of the Taxable Year Limitation on Premiums 40 or less, \$340; More than 40 but not more than 50, \$640; More than 50 but not more than 60, \$1,270; More than 60 but not more than 70, \$3,390; More than 70, \$4,240. *Medical Savings Accounts. Self-only coverage.* For taxable years beginning in 2011, the term "high deductible health plan" as defined in I.R.C. § 220(c)(2)(A) means, for self-only coverage, a health plan that has an annual deductible that is not less than \$2,050 and not more than \$3,050, and under which the annual out-of-pocket expenses required to be paid (other than for premiums) for covered benefits do not exceed \$4,100. (2) Family coverage. For taxable years beginning in 2011, the term "high deductible health plan" means, for family coverage, a health plan that has an annual deductible that is not less than \$4,100 and not more than \$6,150, and under which the annual out-of-pocket expenses required to be paid (other than for premiums) for covered benefits do not exceed \$7,500. *Treatment of Dues Paid to Agricultural or Horticultural Organizations.* For taxable years beginning in 2011, the limitation under I.R.C. § 512(d)(1), regarding the exemption of annual dues required to be paid by a member to an agricultural or horticultural organization, is \$148. *Property Exempt from Levy.* For calendar year 2011, the value of property exempt from levy under I.R.C. § 6334(a)(2) (fuel, provisions, furniture, and other household personal effects, as well as arms for personal use, livestock, and poultry) cannot exceed \$8,370. The value of property exempt from levy under I.R.C. § 6334(a)(3) (books and tools necessary for the trade, business, or profession of the taxpayer) cannot exceed \$4,180. *Interest on a Certain Portion of the Estate Tax Payable in Installments.* For an estate of a decedent dying in calendar year 2011, the dollar amount used to determine the "2-percent portion" (for purposes of calculating interest under I.R.C. § 6601(j)) of the estate tax extended as provided in I.R.C. § 6166 is \$1,360,000. **Rev. Proc. 2010-40, I.R.B. 2010-46.**

**IRA.** The taxpayer received an early distribution from an IRA and used some of the proceeds to pay travel costs relating to a child's higher education. The court held that the amount of travel costs was not eligible for the exemption from the 10 percent addition to tax. The court also held that the portion of the early distribution used to pay health insurance premiums was not exempt from the 10 percent addition to tax. The court held that the 10 percent addition to tax was applied only to the portion of the distribution which was included in taxable income. The appellate court affirmed in a decision designated as not for publication. **Argyle v. Comm'r, 2010-2 U.S. Tax Cas. (CCH) ¶ 50,671 (3d Cir. 2010), aff'g, T.C. Memo. 2009-218.**

**INSTALLMENT REPORTING.** The taxpayer sold property for an installment note and other consideration. Although the taxpayer intended to report the gain from the sale on the installment method, the taxpayer's return reported all the gain in the year of sale. The purchaser discovered mold on the property and payments on the installment note were suspended. The taxpayer sought permission to revoke the election out of the installment method of reporting. The taxpayer stated that the mold problems did not affect the request to revoke the election because the mold problems were discovered before the original return was filed. The IRS granted an extension of time to file an amended return without the election out of the installment method. **Ltr. Rul. 201041005, July 9, 2010.**

**INVESTMENT INCOME.** The taxpayer had a history of making the elections under I.R.C. § 163(d)(1) and 163(d)(4)(B) to treat qualified dividends and capital gains as investment income, subject to tax as ordinary income. The taxpayer's income included investment interest income from a pass-through entity. In a subsequent tax year, the pass-through entity's tax return was amended because of an error which reported too much investment interest expenses. This amended return reduced the taxpayer's investment income for that tax year, making the election unnecessary. The taxpayer sought an extension of time to revoke the investment income election. The IRS granted the extension. **Ltr. Rul. 201041030, July 7, 2010.**

**LEGAL EXPENSES.** The taxpayer incurred legal expenses from defending a lawsuit brought by a client's employee for assault. The court held that the legal expenses were not deductible because the expenses were not related to the taxpayer's business. The appellate court affirmed in a decision designated as not for publication. **Argyle v. Comm'r, 2010-2 U.S. Tax Cas. (CCH) ¶ 50,671 (3d Cir. 2010), aff'g, T.C. Memo. 2009-218.**

**PASSIVE ACTIVITY LOSSES.** The taxpayer was a self-employed real estate agent who reported business income and expenses on Schedule C. The taxpayer also reported income and expenses related to residential rental properties on Schedule E, resulting in a net losses of \$45,199 for one year. The IRS agreed that the taxpayer was a real estate professional but disallowed the losses because the taxpayer did not meet the material participation requirements for the rental activities. The court agreed with the IRS that, although the taxpayer independently qualified as a real estate professional, the taxpayer's lack of material participation in the rental activities made the losses non-deductible passive activity losses. The court noted *Shiekh v. Comm'r, T.C. Memo. 2010-126* where the taxpayer was allowed passive activity loss deductions for rental properties in which the taxpayer qualified as a real estate professional because of the amount time spent on the activity. However, the taxpayer was not allowed passive activity loss deductions for other rental properties in which the taxpayer did not materially participate. In this case, the taxpayer's real estate activity was not treated as part of the same activity as the rental properties. **Perez v. Comm'r, T.C. Memo. 2010-232.**

**PENSION PLANS.** The IRS has announced cost of living adjustments affecting dollar limitations for pension plans and other retirement-related items for tax year 2011. The elective

deferral (contribution) limit for employees who participate in section 401(k), 403(b), or 457(b) plans, and the federal government's Thrift Savings Plan remains unchanged at \$16,500. The catch-up contribution limit under those plans for those aged 50 and over remains unchanged at \$5,500. The deduction for taxpayers making contributions to a traditional IRA is phased out for singles and heads of household who are active participants in an employer-sponsored retirement plan and have modified adjusted gross incomes (AGI) between \$56,000 and \$66,000, unchanged from 2010. For married couples filing jointly, in which the spouse who makes the IRA contribution is an active participant in an employer-sponsored retirement plan, the income phase-out range is \$90,000 to \$110,000, up from \$89,000 to \$109,000. For an IRA contributor who is not an active participant in an employer-sponsored retirement plan and is married to someone who is an active participant, the deduction is phased out if the couple's income is between \$169,000 and \$179,000, up from \$167,000 and \$177,000. The AGI phase-out range for taxpayers making contributions to a Roth IRA is \$169,000 to \$179,000 for married couples filing jointly, up from \$167,000 to \$177,000 in 2010. For singles and heads of household, the income phase-out range is \$107,000 to \$122,000, up from \$105,000 to \$120,000. For a married individual filing a separate return who is an active participant in an employer-sponsored retirement plan, the phase-out range remains \$0 to \$10,000. The AGI limit for the saver's credit (also known as the retirement savings contributions credit) for low-and moderate-income workers is \$56,500 for married couples filing jointly, up from \$55,500 in 2010; \$42,375 for heads of household, up from \$41,625; and \$28,250 for married individuals filing separately and for singles, up from \$27,750. **IR-2010-108.**

#### SAFE HARBOR INTEREST RATES

##### November 2010

	Annual	Semi-annual	Quarterly	Monthly
<b>Short-term</b>				
<b>AFR</b>	0.35	0.35	0.35	0.35
110 percent AFR	0.39	0.39	0.39	0.39
120 percent AFR	0.42	0.42	0.42	0.42
<b>Mid-term</b>				
<b>AFR</b>	1.59	1.58	1.58	1.57
110 percent AFR	1.75	1.74	1.74	1.73
120 percent AFR	1.91	1.90	1.90	1.89
<b>Long-term</b>				
<b>AFR</b>	3.35	3.32	3.31	3.30
110 percent AFR	3.68	3.65	3.63	3.62
120 percent AFR	4.02	3.98	3.96	3.95

**Rev. Rul. 2010-26, I.R.B. 2010-44.**

**TAX RETURN PREPARERS.** The IRS has issued a revenue procedure which provides guidance for foreign persons and U.S. citizens without a social security number, due to conscientious religious objection, to obtain a preparer tax identification number (PTIN) and which provides temporary relief during the 2011 filing season for these individuals who experience delay in obtaining PTINs. **Rev. Proc. 2010-41, I.R.B. 2010-48.**

For 2011, IRS Commissioner Douglas H. Shulman has announced that the IRS will waive the requirements for 15 hours of continuing education under the IRS's return-preparer initiative.

The waiver is part of a staged transition for the requirement and will give the IRS time to address many issues, including working with third parties who already certify education courses. **IR-2010-107**.

**VOLUNTARY PAYMENT OF BACK TAXES.** The taxpayer's 2003 return claimed a refund. Instead of paying the refund to the taxpayer, the IRS applied the funds to the taxpayer's 1997 tax deficiency and then to the taxpayer's 2000 tax deficiency. The taxpayer requested that the IRS apply the refund to the 2000 tax deficiency first but the IRS refused. The court noted that voluntary payments of back taxes can include a request for application of those payments to specific tax deficiencies and the IRS will usually comply. The court held, however, that refunds are not considered voluntary payments and the IRS was not required to comply with the taxpayer's request to apply the refund to the 2000 taxes. The appellate court affirmed in a decision designated as not for publication. **Bryant v. Comm'r, 2010-2 U.S. Tax Cas. (CCH) ¶ 50,669 (6th Cir. 2010), aff'g, T.C. Memo. 2009-78.**

**WITHHOLDING TAXES.** The taxpayer operated a trucking company and had consistently treated its truck drivers as independent contractors who provided their own trucks and all maintenance of the trucks. In a Chief Counsel Advice letter, the IRS ruled that compensation to the drivers was eligible for I.R.C. § 530 relief from treatment as wages. **CCA 201041043, Sept. 30, 2010.**

The taxpayer was the sole shareholder of a corporation which operated a therapy center which provided massage therapy, cosmetology services and massage instruction. The center offered space to massage therapists and cosmetologists who provided services to clients. The therapists and cosmetologists weekly paid either "booth rent" or a share of their receipts for their use of the facility. The therapists and cosmetologists set their own hours and clients and had independent access to the facility. The taxpayer did not file W-2 forms or withhold employment taxes on the amounts received by the therapists and cosmetologists. The court held that the therapists and cosmetologists were independent contractors not subject to withholding because (1) there was no minimum guaranteed level of payment; (2) the taxpayer did not pay the therapists' and cosmetologists' business expenses; (3) some therapists made significant investments in outfitting and decorating their rooms; (4) the taxpayer had the right to collect minimum fixed rent each week; (5) the therapists and cosmetologists believed that they had a nonemployee relationship with the taxpayer; (6) the taxpayer did not control how the therapists and cosmetologists provided their services to the clients; (7) the therapists and cosmetologists set their own hours; and (8) the therapists and cosmetologists retained the right to refuse any client. **Mayfield Therapy Center v. Comm'r, T.C. Memo. 2010-239.**

## NEGLIGENCE

**DUTY OF CARE TO INVITEES.** The plaintiff was injured on the defendant's farm while visiting the farm to purchase a

piece of farm equipment. The equipment was stored in the second floor of a barn and in order to move the equipment, the plaintiff helped move a carpet over a hay drop door and fell through the hay drop when the carpet unlatched the hay drop door. The trial court granted summary judgment for the defendant, holding that the defendant did not owe a duty of care to discover the danger to the hay drop door from moving the carpet. The appellate court affirmed, noting that for an invitee such as the plaintiff, the defendant owed a duty only to make reasonable inspection of the property to discover any dangerous conditions. The court also noted that, although hay drops are potentially dangerous, the exact condition that led to the accident was not a natural condition of a hay drop door and the defendant would not reasonably be expected to discover the effect of moving the carpet on the hay drop door. **Snyder v. Meyers, 2010 Ohio. App. LEXIS 3470 (Ohio Ct. App. 2010).**

## LANDLORD AND TENANT

**DEATH OF TENANT.** The plaintiff was married to the decedent who leased farm land from the defendant under a year-to-year lease. The decedent died during the term of the lease and the plaintiff sought to enforce the lease against the defendant because the defendant failed to give notice of termination of the lease before six months before the end of the year. The plaintiff filed and recorded a "Notice of 2008 Leasehold Interest" when the defendant tried to sell the farm. After the sale, the defendant notified the plaintiff that the farm was sold and ordered the plaintiff to vacate in two months. The plaintiff filed an action to enforce the lease and the defendant counter-claimed with an action for slander of title. By the time the case was decided at the trial level, the lease had expired in any case but the issue remained for decision because of the effect on the slander of title claim. The court held that, because the lease was a cash lease, the death of the tenant did not automatically terminate the lease because the tenant's services were not essential to the lease performance. Therefore, the court held that the defendant had to give six months notice before terminating the lease. The court further held that, because the plaintiff correctly held a lease interest in the farm, the recording of the notice of leasehold did not slander the defendant's title. **Wilson v. Fieldgrove, 787 N.W.2d 707 (Neb. 2010).**

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Chapter 5 Bankruptcy  
Chapter 6 Income Tax Planning and Management  
Chapter 7 Real Property  
Chapter 8 Estate Planning

Chapter 9 Business Planning  
Chapter 10 Cooperatives  
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Chapter 12 Criminal Liabilities  
Chapter 13 Water Law  
Chapter 14 Environmental Law  
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Neil E. Harl is one of the country's foremost authorities on agricultural law. Dr. Harl is a member of the Iowa Bar, Charles F. Curtiss Distinguished Professor in Agriculture and Emeritus Professor of Economics at Iowa State University, and author of the 14 volume treatise, *Agricultural Law*, the one volume *Agricultural Law Manual*, the two-volume *Farm Income Tax Manual*, and numerous articles on agricultural law and economics.

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